

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

FILED
1990 SEP 28

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Board of Health TITLE NUMBER: 64

RULE TYPE: Legislative; CITE AUTHORITY W.Va. Code §16-1-9a

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: Public Water Systems, Bottled Water and
Laboratory Certification

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: October 30, 1990 TIME: 1:00 p.m.

LOCATION OF PUBLIC HEARING: Room 522

Building 3, Capitol Complex

Charleston, WV 25305

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Kay Howard

Regulatory Development Section

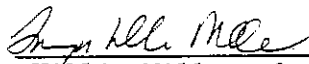
Rm. 204, Bldg. 3, Capitol Complex

Charleston, WV 25305

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL


Taunja Willis Miller, Secretary
Dept. of Health & Human Resources

WEST VIRGINIA DIVISION OF HEALTH
RULE ABSTRACT
1990

Title: Public Water Systems, Bottled Water, and Laboratory Certification

CSR Title and Series: 64 CSR 3

Type: Legislative

Summary: The proposed major revision of the existing Public Water Supply rule adopts all federal drinking water regulations in effect at this time or by December 31, 1990, in place of standards in the existing rule; clarifies the State's administrative procedures; strengthens the standards for bottled water; and provides an explicit process and standards for certification of laboratories to provide drinking water testing results for purposes of this rule. A few requirements unique to West Virginia are included.

The purpose of the revision is to comply with federal requirements and to correct deficiencies in the existing rule.

For further information contact: Regulatory Development Section, telephone 348-3223 or William Herold, Office of Environmental Health, Division of Health, Building 3, Capitol Complex, Charleston, WV 25305, Telephone 348-2981 or Charlotte Billingsley, Office of Laboratory Services, Division of Health, 167 11th Avenue, South Charleston, WV 25303, Telephone 348-3530.

Copies of the federal drinking water standards are available from the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, Telephone (215) 597-8227 or can be viewed at the Office of Environmental Health or in any public library which is a Government Documents Depository Library. Copies of the Manual for the Certification of Laboratories Analyzing Drinking Water adopted by reference are available from the Office of Laboratory Services.

FISCAL NOTE FOR PROPOSED RULES
(Revised)

Rule Title: Public Water Systems, Bottled Water, and Laboratory Certification

Type of Rule: Legislative Interpretive Procedural

Agency Division of Health Address Building 3, Capitol Complex
Charleston, W. Va. 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$50,000	\$45,000
Personal Services				45,000	45,000
Current Expense					
Repairs and Alterations					
Equipment				5,000	
Other					

2. Explanation of above estimates.

It is estimated that two additional clerical personnel and one additional computer will be required to handle the increased data management responsibilities specified by the new federal requirements.

3. Objectives of these rules:

The proposed major revision of the existing Public Water Supply rule adopts all federal drinking water regulations in effect at this time or by December 31, 1990, in place of standards in the existing rule; clarifies the State's administrative procedures; strengthens the standards for bottled water; and provides an explicit process and standards for certification of laboratories to provide drinking water testing results for purposes of this rule. A few requirements unique to West Virginia are included.

The purpose of the revision is to comply with federal requirements and to correct deficiencies in the existing rule.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None, other than that noted on previous page. Failure to adopt the revised rule will result in the loss of approximately \$400,000 in federal funding annually and federal, rather than State, administration of the drinking water standards.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.

Some public water treatment plants may be required to upgrade facilities to meet the new federal treatment requirements. Cost increases required by the new federal standards will vary widely, depending on the individual system. Data to provide specific estimates for individual systems is not available. The Division will assist individual systems to minimize costs, but many of West Virginia's marginal systems will have difficulty complying. Larger systems are not likely to incur any appreciable new costs. Availability of water treated to current national standard may encourage location of new businesses in West Virginia.

C. Economic Impact on Citizens/Public at Large.

The economic impact will be negligible for the public at large. Those systems which are required to upgrade facilities will probably increase rates to customers (if approved by the Public Service Commission). The economic outlook may be improved in those areas in which water systems are upgraded.

Date September 26, 1990

Signature of Agency Head or Authorized Representative



Taunja Willis Miller, Secretary
Department of Health and Human Resources

[PROPOSED]

TITLE 64

WEST VIRGINIA LEGISLATIVE RULES

BOARD OF HEALTH
PUBLIC WATER SYSTEMS, BOTTLED WATER,
AND LABORATORY CERTIFICATION

SERIES 3

1990

For Public Hearing
October 30, 1990

[PROPOSED]
WEST VIRGINIA LEGISLATIVE RULES
BOARD OF HEALTH

PUBLIC WATER SYSTEMS, BOTTLED WATER,
AND LABORATORY CERTIFICATION

64 CSR 3

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[PROPOSED]
TITLE 64
WEST VIRGINIA LEGISLATIVE RULES
BOARD OF HEALTH

SERIES 3
PUBLIC WATER SYSTEMS, BOTTLED WATER,
AND LABORATORY CERTIFICATION

§64-3-1. General

1.1. Scope - This legislative rule establishes State standards and procedures and adopts national drinking water standards for public water systems. It establishes standards for the production and distribution of bottled drinking water, and also adopts federal standards for the certification of laboratories performing analyses of drinking water.

1.2. Authority - W.Va. Code §16-1-9a.

1.3. Filing Date -

1.4. Effective Date -

1.5. Public Hearing - October 30, 1990.

1.6. Final Approval - This rule was approved by the State Board of Health on _____.

1.7. Supersession or Repeal of Former Regulations - This rule supersedes and repeals the following West Virginia Board of Health Legislative rules: Public Water Supply Regulations, 64 CSR 3, 1982; Volatile Synthetic Organic Chemicals, 64 CSR 61, 1989; and Plumbing Requirements, 64 CSR 57, 1989.

§64-3-2. Application And Enforcement

2.1. Application - This rule applies to public drinking water systems, to bottled water treatment plants and distributors and to laboratories desiring certification to perform analytic tests of drinking water.

2.2. Enforcement - Enforcement of this rule is vested with the director of the division of health.

§64-3-3. Definitions

3.1. Bottled Water - Any natural or artificial mineral, spring, well, distilled or other water bottled or containerized for use primarily as drinking water.

3.2. Bottled Water Distributor - A person who buys and sells bottled water on a wholesale basis.

3.3. Community Water System - A public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.

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3.4. Director - Director of the division of health or his or her designee.

3.5. Non-Community Water System - Any public water system that is not a community water system.

3.6. Person - Individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency or any other entity recognized by law.

3.7. Public Water System - Any water system or supply which regularly supplies or offers to supply, piped water to the public for human consumption, if serving at least an average of twenty-five (25) individuals per day for at least sixty (60) days per year, or which has at least fifteen (15) service connections and shall include:

(1) Any collection, treatment, storage, and distribution facilities under the control of the owner or operator of such system and used primarily in connection with such system, and

(2) Any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

A public water system shall not include a system which meets all of the following conditions:

(1) which consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(2) which obtains all of its water from, but is not owned or operated by a public water system which otherwise meets the definition;

(3) which does not sell water to any person;

(4) which is not a carrier conveying passengers in interstate commerce.

3.8. Sanitary Survey - An on-site review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation and maintenance for producing and distributing drinking water, as described in the federal regulations adopted herein.

\$64-3-4. Public Water System Construction, Alteration or Renovation; Standards; Exceptions

4.1. No person may construct, alter, renovate or award a contract for any construction, alteration or renovation of a public water system without obtaining a permit from the director.

4.2. Application for a permit to construct, alter or renovate shall be made to the director on forms prescribed by the director at least forty-five (45) days prior to the date on which approval by the director is desired. The application shall be accompanied by an engineering report, maps, and detailed plans and specifications of the public water system prepared by or under the direction of a registered professional engineer.

4.3. A permit to construct, alter or renovate may be revoked by the director for failure of the public water system to comply with this rule.

4.4. A permit to construct, alter or renovate shall be valid for two (2) years from the date of issuance.

4.5. The public water system shall be constructed, altered or renovated in accordance with the plans and specifications approved by the director in accordance with Design Standards for Public Water Supply Systems, 64 CSR 42.

4.6. To the extent practical, all new or expanded facilities shall be located outside of the one hundred year flood plain.

4.7. The director has the authority to issue an order requiring a change in the source of the water supply for the system or in the manner of collection, treatment, storage, or distribution facilities of the system before delivery to the consumer as may be necessary to safeguard the public health.

4.8. A permit to construct, alter or renovate is not required for any minor addition to, or alteration or renovation of an existing public water system which will not affect the quality or quantity of water supply service rendered: Provided, That the work shall be done in accordance with the provisions of Design Standards for Public Water Supply Systems, 64 CSR 47.

A written description of the proposed additions, alterations or renovations shall be submitted to the director no less than ten (10) working days prior to implementing such additions, alterations or renovations under this provision. The director shall notify the system whether or not the proposed additions, alterations or renovations qualify under this provision within five (5) days of receipt of the description.

§64-3-5. Permit To Operate A Public Water System

5.1. A public water system shall be operated in accordance with this rule and the federal regulations adopted herein.

5.2. The director shall have the authority to develop a

program for the issuing of a permit to operate a public water system. Such permit shall be renewable annually and may be revoked for failure to comply with the requirements of this rule or the federal standards adopted herein. Such permit program shall be administered uniformly. No permit shall be granted until after the director has completed a sanitary survey.

5.3. In the event of a proposed change in the ownership of a public water system, a written application to transfer the permit to operate shall be made to the director by the new owner at least fifteen (15) days before the proposed change.

5.4. The current permit to operate shall be posted in a conspicuous place at the public water system's treatment plant or main office.

§64-3-6. Inspections and Sanitary Surveys of Public Water Systems

6.1. Public water systems shall be inspected as scheduled by the director and sanitary surveys shall be conducted by the director in accordance with the federal regulations adopted herein.

6.2. The director has the right of access to all parts of a public water system and shall be furnished access to all information and records required to be kept by this rule and the federal regulations adopted herein.

§64-3-7. Public Water System Disinfection Requirements

7.1. Disinfection with chlorine, chlorine dioxide, chloramines or ozone is required of all public water systems, provided the requirements of section 7.6 of this rule are met.

7.2. The disinfectant shall be applied during treatment at a point before entering the distribution system which will provide effective contact time.

7.3. The minimum chlorine contact time for groundwater systems not influenced by surface waters is thirty (30) minutes from the point of application to the point of delivery to the first consumer or as stipulated in Design Standards for Public Water Supply Systems, 64 CSR 42. At the end of the chlorine contact time, minimum free chlorine residuals shall comply with the requirements of Table 64-3A found at the end of this rule. For such systems, the amount of residual disinfectant in the drinking water at the treatment plant and in the distribution system shall be determined at least once per day, or more often if deemed necessary by the director.

7.4. Surface water systems and groundwater systems under the direct influence of surface waters shall meet the disinfection requirements of the federal regulations adopted herein.

7.5. Chlorine residual testing equipment shall enable measurement of free and total chlorine residuals to the nearest 0.2 milligrams per liter in the range of 0.0 milligrams per liter to 2.0 milligrams per liter.

7.6. For all public water systems, at least 0.2 milligrams per liter of total chlorine residual shall be maintained throughout the distribution system at all times.

7.7. The director shall have the authority to authorize variances in the chlorine disinfection parameters specified in this section.

§64-3-8. Public Water System Fluoridation

8.1. Except for water systems operated by public schools, average concentrations of fluoride present in the drinking water of a public water system, which artificially adjusts fluoride concentrations, shall be no less than the minimum and no higher than the maximum concentrations shown in Table 64-3B found at the end of this rule.

8.2. Average concentrations of fluoride present in a public school drinking water system shall be no less than three (3.0) milligrams per liter and no higher than six (6.0) milligrams per liter, with an optimum concentration of four and one-half (4.5) milligrams per liter.

8.3. The drinking water of fluoridated or defluoridated public water systems shall be monitored once per day for fluoride concentration. Records of such monitoring shall be maintained in accordance with Section 10 of this rule.

8.4. At least once a month, a sample of drinking water shall be submitted by the public water system to the director or to a certified laboratory for fluoride analysis.

8.5. The requirements of Section 8.2 of this rule supersede the requirements of the National Secondary Drinking Water Regulations, 40 CFR Part 143, as applicable to fluoridation of public school drinking water.

§64-3-9. Public Water System Control Tests and Record Maintenance

9.1. Records of microbiological, turbidity, radiological and chemical analyses, or a summary thereof, shall be retained at a convenient location on or near the premises of the public water system. Microbiological, turbidity and radiological and chemical analytical records shall be kept for ten (10) years. Control tests and operational records shall be kept for five (5) years. All tests and analyses required by this rule or the federal regulations adopted herein, with the exception of turbidity and chlorine residual analyses, shall be conducted by a laboratory certified by the director.

9.2. The records shall include the date, place and time of sampling; the name of the person who collected the sample; identification as to whether it was a routine distribution system sample, resample, raw or drinking water sample, or other special purpose sample; the date of the analysis; the laboratory and person responsible for performing the analysis; the analytical technique or method used for microbiological testing; and the results of the analysis.

9.3. Records of action taken by the system to correct violations of this rule or the federal regulations adopted herein shall be kept for three (3) years after the correction is completed.

9.4. Copies of written reports relating to sanitary surveys of the system shall be kept for ten (10) years.

9.5. Records concerning a variance or exemption from this rule or the federal regulations adopted herein shall be kept for at least five (5) years following the expiration of such variance or exemption.

§64-3-10. Adoption of National Regulations - The National Primary Drinking Water Regulations, 40 CFR Parts 141 and 142 subparts E, F, G, as amended in the Federal Register June 29, 1989 and June 19, 1990 and effective as of December 31, 1990 and the National Secondary Drinking Water Regulations, 40 CFR Part 143, in effect as of [INSERT DATE OF PUBLIC HEARING HERE] are hereby adopted by reference. The director shall use the provisions of 40 CFR 142, Subparts E, F and G, as applicable, in granting variances.

Copies of these regulations are available from:

U.S. Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

§64-3-11. Bottled Water Treatment Plants and Distributors

11.1. No person may operate a bottled water treatment plant in this State without receiving a permit to bottle and distribute water from the director.

11.2. No person may distribute bottled water in this State without receiving a permit to distribute bottled water from the director.

11.3. Application for a permit to bottle and distribute water shall be made to the director on forms prescribed by the director. Four (4) sets of completed applications, and plans and specifications for the treatment plant shall be submitted to the director for approval at least forty-five (45) days prior to the

date on which a permit from the director is desired.

11.4. The source of the water to be bottled and the bottled water shall comply with the requirements of Design Standards for Public Water Supply Systems, 64 CSR 47, this rule and the requirements of the federal regulations adopted herein pertaining to primary and secondary contaminants, sodium, fluoridation, maximum contaminant levels, sampling techniques and monitoring frequencies, for a community water system, except that the monitoring frequency for microbiological contaminants shall be no less than once each week.

11.5. A bottled water treatment plant shall be operated in accordance with the provisions of the federal standards, Current Good Manufacturing Practice in Manufacturing, Packaging or Holding Human Food, 21 CFR Part 110, in effect as of [FILL IN THE PUBLIC HEARING DATE] and such standards are hereby adopted by reference.

11.6. Each in-State bottled water treatment plant shall be inspected every twelve (12) months or as otherwise determined by the director.

11.7. An out-of-State bottled water treatment plant desiring to distribute bottled water in West Virginia shall apply for a permit to bottle and distribute bottled water on forms approved by the director. Four (4) copies of all materials shall be submitted. The out-of-State treatment plant shall comply with the requirements of this rule and the federal regulations adopted herein for in-State bottled water treatment plants. Subsequent to the initial evaluation, monitoring of the treatment plant by the regulatory agency of the state wherein the treatment plant is located will be deemed acceptable for the purposes of this rule. The out-of-State treatment plant shall notify the director of any corrective action it is required to take by its state regulatory authority and shall notify the director of any change in ownership or in the event that it closes.

11.8. A person wishing to distribute bottled water in the state who does not operate a bottled water treatment plant shall apply for a permit to distribute bottled water on a form approved by the director. The applicant shall identify the location of the plants from which the bottled water is obtained and any distributor other than the bottled water plant from which the bottled water is obtained and shall provide other information required by the director. The director shall grant a permit to distribute bottled water if the bottled water complies with the requirements of this rule.

11.9. A permit issued by the director may be revoked for failure to comply with provisions of this rule.

§64-3-12. Public Water System Reporting Requirements

12.1. Unless otherwise specified in this rule or the federal regulations adopted herein, the results of any test, measurement or analysis required to be made by this rule or the federal regulations adopted herein shall be reported to the director within forty (40) days of the system's receipt of the test, measurement or analysis.

12.2. Analytical results for total trihalomethane (TTHM) analyses shall be reported to the director within thirty (30) days of the system's receipt of such results.

12.3. Failure to comply with this rule or the federal regulations adopted herein shall be reported to the director within forty-eight (48) hours of the discovery of the violation.

12.4. Analytical results of tests performed by the laboratory of the division of health are not required to be reported.

12.5. A written summary of the public water system operation, test data, and such other information as may be required by the director shall be submitted to the director at least once per month. The director may require more frequent reports in cases where there are public health concerns.

12.6. All reports and summaries required by this rule or the federal regulations adopted herein shall be submitted in a manner or form approved by the director.

12.7. The water supply system shall submit to the director a representative copy of each type of notice distributed, posted or made available to the public or media within seven (7) days following any notification of the public of a violation of this rule or of the federal regulations adopted herein.

§64-3-13. Certification of Laboratories To Conduct Drinking Water Tests

13.1. All laboratories providing drinking water testing results for purposes of this rule or the federal regulations adopted herein shall be certified by the director or by the Federal Environmental Protection Agency.

13.2. A certified laboratory shall comply with the requirements of this rule and with the requirements and criteria contained in the sections titled "Local Laboratories," "Other Considerations for Laboratory Certification," "Requirements for Maintaining Certification Status," "Criteria and Procedures for Downgrading/Revoking Certification Status," and "Training," of Chapter III, and in Chapters IV, V and VI of the federal Environmental Protection Agency's Manual for the Certification of Laboratories Analyzing Drinking Water, April, 1990, and such parts of said manual are hereby adopted by reference.

13.3. An in-State laboratory shall submit an application

form when seeking initial approval sixty (60) days prior to the date certification is desired.

13.4. A laboratory located outside the boundaries of this State will be certified by the director if:

1. It has been certified by the Federal Environmental Protection Agency; or

2. It has been certified by a program for the certification of laboratories equivalent to the program of this State as determined by the director. If the program of the state in which the laboratory is located is not judged equivalent, the laboratory may request an on-site evaluation and full certification review by the director.

13.5. An out-of-State laboratory shall submit an application form when seeking initial approval and shall include with its application evidence of compliance with Section 13.4.1 or 13.4.2 of this rule. The out-of-State laboratory shall notify the director immediately of any change in its certification status under Section 13.4.1 or 13.4.2.

13.6. On-site Inspection - An on-site inspection of in-State laboratories to determine compliance with this rule and the federal standards adopted herein shall be conducted initially prior to certification, and at least every three years thereafter. The division shall have the right of entry upon proper identification at such times as deemed necessary during operating hours in order to conduct such inspections.

13.7. Certificates of approval shall be issued upon initial approval and shall be renewable on an annual basis thereafter pursuant to the conditions listed herein. Certificates issued will contain the name and location of the laboratory, a laboratory code number, the name of the laboratory director and the date of expiration of the certificate.

13.8. Certified laboratories shall notify the director when there is a change in ownership, laboratory director, technical personnel or location of the laboratory.

13.9. The director shall administer and use the criteria and procedures of the Section titled "Criteria and Procedures for Downgrading/Revoking Certification Status" of the Manual for the Certification of Laboratories Analyzing Drinking Water referenced in Section 13.2 of this rule.

\$64-3-14. Penalties - Any person who violates any provision of this rule or orders issued hereunder, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200) and each day's violation shall constitute a separate offense. In addition, thereto, the director of health or his or

her authorized representative may seek injunctive relief in the circuit court of the county in which all or part of the public water system is situated for threatened or continuing violations. For a willful violation of this rule or orders issued hereunder, a person, upon a finding thereof by the circuit court of the county in which the violation occurs, shall be subject to a civil penalty of not more than five thousand dollars (\$5,000), and each day's violation shall be grounds for a separate penalty.

\$64-3-15. Administrative Due Process - Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in the Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.

\$64-3-16. Severability - The provisions of this rule are declared to be severable. If any provision of this rule shall be held invalid, the remaining provisions shall remain in effect.

TABLE 64-3A. Minimum Levels of Free Chlorine Residual at Various Water Sample pH Levels

<u>pH VALUE</u>	<u>FREE CHLORINE RESIDUAL</u>
Up to 7.0	0.4 mg/l
7.1 to 8.0	0.6 mg/l
8.1 to 9.0	1.0 mg/l

TABLE 64-3B. Average Acceptable Range of Fluoride Concentration at Various Annual Average Maximum Daily Air Temperatures

<u>ANNUAL AVERAGE MAXIMUM DAILY AIR TEMPERATURE</u>	<u>FLUORIDE CONCENTRATION IN MILLIGRAMS PER LITER</u>		
	Lower	Optimum	Upper
53.8 - 58.3° F 12.1 - 14.6° C	0.8	1.1	1.5
58.4 - 63.8° F 14.7 - 17.7° C	0.8	1.0	1.3
63.9 - 70.6° F 17.7 - 21.4° C	0.7	0.9	1.2